

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

BRENDAN J. BERGER,)	
)	
Plaintiff,)	
v.)	Case No. 1:19cv00099
)	
)	Magistrate Judge: Hon. Karen L. Litkovitz
NATIONAL BOARD OF)	
MEDICAL EXAMINERS,)	
)	
Defendant.)	

JOINT MOTION TO STAY PROCEEDINGS

Plaintiff Brendan Berger (“Dr. Berger”) and defendant National Board of Medical Examiners (“NBME”) jointly move for a partial stay of all further proceedings in this Court pending resolution of the appeal that NBME has filed from the Court’s Order of August 27, 2019 (Doc. No. 20), granting Dr. Berger’s motion for a preliminary injunction (Doc. No. 1). In support of this motion, the parties state as follows:

1. This action was filed on February 7, 2019.
2. The Court issued a Calendar Order on May 31, 2019, setting various deadlines for the case, including discovery cutoffs, a dispositive motion deadline, and a tentative trial date in May 2020. (See Doc. No. 15).
3. On July 3, 2019, Dr. Berger filed a motion for a preliminary injunction.
4. On August 27, 2019, the Court granted Dr. Berger’s motion and ordered NBME to allow Dr. Berger to take Step 2 CK with accommodations. Dr. Berger has not yet tested but is planning to do so in November 2019.

5. NBME filed a timely Notice of Appeal on September 17, 2019 from the Court's preliminary injunction Order. The appeal has been docketed in the Court of Appeals as Case Number 19-3885. NBME's opening brief is due December 3, 2019; Dr. Berger's brief is due January 2, 2020; and NBME's reply brief is due January 23, 2020.

6. "Although the filing of an interlocutory appeal does not automatically stay proceedings in the district court, the district court has broad discretion to decide whether a stay is appropriate to promote economy of time and effort for itself, for counsel, and for litigants." *Ass'n of Irrigated Residents v. Fred Schakel Dairy*, 634 F. Supp. 2d 1081, 1094 (E.D. Cal. 2008).

7. The appellate proceedings will likely affect how this case proceeds. If the appeal results in an opinion, the Court of Appeals will almost certainly address the merits of the Dr. Berger's ADA claim in discussing the likelihood-of-success factor. Any such analysis would, in turn, affect the parties' briefing and the Court's decision-making on remand. It is also possible that the appeal will be resolved informally by the parties, through the Court of Appeals' mediation program or otherwise. In either event, a stay of proceedings will promote judicial efficiency and avoid potentially unnecessary actions and expense.

8. The only activity that the parties would like to retain the option of pursuing while the appeal is pending is third-party document discovery. Either party could seek a lifting of the stay if circumstances warranted.

9. The requested stay would not apply to the Court's preliminary injunction Order.

WHEREFORE, the parties request that, absent further order by the Court, (1) all proceedings in this Court be stayed pending resolution of Case No. 19-3885 in the U.S. Court of Appeals for the Sixth Circuit, except for third-party document discovery; (2) all deadlines in the

Court's Calendar Order of May 30, 2019 be adjourned; and (3) upon resolution of the appeal in Case No. 19-3885, the Court hold a status conference. A Proposed Order is attached.

Dated: October 16, 2019

Respectfully submitted,

/s/ Erin D. French

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 16th day of October 2019, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ Erin D. French